The Pensions Brief

At a glance...

Issues affecting all schemes

- **INVESTMENT AND DISCLOSURE**
  Additional trustee investment and disclosure duties

- **INVESTMENT CONSULTANCY AND FIDUCIARY MANAGEMENT**
  New requirements for trustees in relation to investment consultancy and fiduciary management services

- **PENSION SCAMS**
  Revised industry code of good practice on combating pension scams

- **ILL-HEALTH RETIREMENT**
  Deputy Pensions Ombudsman decision on the process to be followed when considering an ill-health retirement application

- **TRANSFERS**
  Pensions Ombudsman decision on failure to meet the statutory deadline for processing a transfer request


Issues affecting DB schemes

- **FINANCIAL SUPPORT DIRECTIONS**
  Court of Appeal decision on the factors that the Pensions Regulator may take into account when deciding whether to issue a financial support direction

Issues affecting DC schemes

- **INVESTMENT GOVERNANCE**
  Revised Pensions Regulator guidance on DC investment governance

Action required

Follow development and keep under review
Issues affecting all schemes

Investment and disclosure – additional new requirements

Regulations have been made that extend the requirements that come into force in October 2019 and October 2020 on the policies that must be included in a scheme’s statement of investment principles (SIP), and the information that must be included in a scheme’s annual report and published on a website. The additional requirements include:

- A requirement for all schemes to include a policy in their SIP on the trustees’ arrangements with asset managers.
- A requirement for DB schemes to publish their SIP on a website (a requirement for DC schemes to publish their SIP on a website was announced last year and comes into force in October 2019).
- A requirement for DC schemes to also include an asset manager policy in their SIP for the scheme’s DC default arrangement.
- A requirement for all schemes to include their asset manager policy in the scheme’s annual report.
- A requirement for DB schemes to include a statement in their annual report giving certain information on compliance with their stewardship policy and voting behaviour, and to publish this statement on a website.
- Additional content that must be included in the implementation statement that DC schemes are required to include in their annual report and publish on a website.

The requirements come into force between October 2020 and October 2021. For more information, please see our legal update.

The Pensions Regulator has published a statement summarising the additional requirements.

Action

Trustees should ensure that they understand how the new requirements dovetail with those announced last year so that they can factor the requirements into their scheme planning, and make arrangements to comply with them by the relevant deadlines. We have produced tables summarising the new requirements and those announced last year, and when they come into force, which are available to our clients on request.
Investment consultancy and fiduciary management – new requirements

The Competition and Markets Authority (CMA) has published the final remedies order in its market investigation into investment consultancy and fiduciary management services, as well as an accompanying explanatory note. The order takes effect on 10 December 2019 and requires trustees to:

- Run a competitive tender process when appointing (or re-appointing) a fiduciary manager in respect of 20% or more of scheme assets.
- Set strategic objectives for their investment consultant.
- Submit annual compliance statements to the CMA.

The Pensions Regulator is expected to consult this summer on guidance to support trustees in complying with their duties under the order. The order also imposes requirements on service providers. For more information, please see our legal update.

Action

Trustees should take advice on putting in place strategic objectives for their investment consultants. Trustees who have fiduciary management arrangements in place, and trustees considering appointing a fiduciary manager, should also take advice on how the new requirements on competitive tendering will affect them.

Transfers and pension scams – code of practice

The Pension Scams Industry Group has published version 2.1 of its code of good practice on combating pension scams. This replaces version 2.0 which was published in June 2018. The code has been updated to reflect developments including:

- the ban on cold calling; and
- the launch of the Money and Pensions Service.

Action

Trustees and their administrators may find the revised code useful when considering what actions they can take to help protect members from pension scams.
Ill-health retirement – decision-making process
The Deputy Pensions Ombudsman has directed an employer to reconsider its decision to reject an enhanced ill-health retirement application. In addition to finding that the employer had not considered the relevant evidence in reaching its decision, the Deputy Ombudsman considered that the employer’s pension manager’s dual role as scheme secretary had affected the decision-making process and may have contributed to a lack of procedural clarity.

*Ms N (PO-13446)*

**Action**
Employers and trustees should ensure that they follow a proper decision-making process when considering ill-health retirement applications and that they consider all relevant evidence.

Transfers – failure to meet statutory deadline
The Pensions Ombudsman has directed a trustee to pay a member £3,000 compensation for distress and inconvenience caused by the trustee’s failure to process the member’s transfer request by the six month statutory deadline. The transfer, which was requested in February 2018, still had not been completed by the time of the Ombudsman’s decision (May 2019), and the trustee had failed to produce any cogent reasons for the delay. The Ombudsman therefore decided that the distress and inconvenience caused was exceptional, merit the much higher than usual compensation amount. The Ombudsman described the trustee’s behaviour as “inexcusable” and stated that he would notify the Pensions Regulator of the trustee’s failure to process the transfer. The Ombudsman also directed the trustee to compensate the member for the additional mortgage interest payments that the member was obliged to make as a result of the transfer not being processed.

*Mr E (PO-22695)*

**Action**
Trustees and their administrators should ensure that not only do they meet the six month statutory deadline for processing transfer requests, but that they do not unreasonably delay the processing of transfer requests and that they treat the statutory deadline as a long-stop rather than a target.
Financial support directions – Court guidance

The Court of Appeal has upheld the Upper Tribunal’s decision that it was reasonable for the Pensions Regulator to have issued financial support directions (FSDs) to five companies. The Court held that:

• The FSD legislation contains no express time limits in relation to the matters which the Regulator must take into account when deciding whether it is reasonable to impose an FSD. The Regulator was not therefore prohibited from considering matters which occurred prior to the legislation coming into force.

• In reaching the decision that it was reasonable for the Regulator to issue the FSDs, the Upper Tribunal had not erred in law by reaching a decision which no reasonable tribunal could have reached.

Granada UK Rental & Retail Limited and others v Pensions Regulator [2019] EWCA Civ 1032

Action
No action required.

Investment – Pensions Regulator guidance

The Pensions Regulator has updated its guidance accompanying the investment governance section of its DC code of practice to cover the new requirements in relation to the content of the statement of investment principles and the annual report that are coming into force between October 2019 and October 2020.

Action
Trustees of DC schemes may find the guidance helpful when considering the changes they need to make to their statement of investment principles and annual report.
Mayer Brown news

Upcoming events
All events take place at our offices at 201 Bishopsgate, London EC2M 3AF.

- **Trustee Foundation Course**
  17 September 2019
  10 December 2019

- **Trustee Building Blocks Classes**
  12 November 2019 – DB funding and investment

- **Annual Pensions Conference**
  2 October 2019

Employer Perspectives – news and views on employment and pensions issues
Visit the blog at employerperspectives.com and subscribe to blog updates via email.

Mayer Brown media comment
Duncan Watson was quoted in Investment & Pensions Europe on the additional trustee investment and disclosure requirements.

The View from Mayer Brown:
UK Pensions Law Videos and Podcasts
Watch or subscribe to Mayer Brown’s YouTube channel here:

[Subscribe via YouTube]

Listen to or subscribe to Mayer Brown UK Pensions Law iTunes channel here:

[Subscribe via iTunes]

Please note – subscribing above will only work on a device with iTunes installed. Alternatively if you don’t have iTunes you can access the audio via the links below:

- Google
- Yahoo

Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

For more information about the Pensions Group, please contact:

**Ian Wright**
Co-Head of Pensions, London
E: iwright@mayerbrown.com
T: +44 20 3130 3417

**Jay Doraisamy**
Co-Head of Pensions, London
E: jadoraisamy@mayerbrown.com
T: +44 20 3130 3031
Dates to note over the next 12 months

10 December 2019
Annual allowance deadline for member requests for "scheme pays" (2017/18 tax year)

10 December 2019
CMA requirements on investment consultancy and fiduciary management services come into force

14 February 2020
Annual allowance deadline for schemes to pay tax due under "scheme pays" (2017/18 tax year)

14 February 2020
Annual allowance deadline for schemes to include details of tax due under "scheme pays" in scheme's AFT return (2017/18 tax year)

6 October 2019
Annual allowance deadline for schemes to provide members with pension savings statements for the 2018/19 tax year

6 October 2019
Date of Brexit if the withdrawal agreement has not been ratified and a further extension has not been agreed

31 July 2019
Annual allowance deadline for member requests for "scheme pays" (2017/18 tax year)

31 July 2019
Annual allowance deadline for employers to provide schemes with information to calculate pension input amounts incurred by members in pension input periods ending in the 2018/19 tax year

Key:
- Important dates to note
- For information

**Important Dates to Note**

- Removal of the actuarial certification option for DC bulk transfers without consent
- New requirements on the content of SIPs and the annual report and on disclosure come into force

**Annual Allowance Deadlines**

- 6 July 2019: Annual allowance deadline for employers to provide schemes with information to calculate pension input amounts incurred by members in pension input periods ending in the 2018/19 tax year.
- 6 October 2019: Annual allowance deadline for schemes to provide members with pension savings statements for the 2018/19 tax year.
- 31 October 2019: Date of Brexit if the withdrawal agreement has not been ratified and a further extension has not been agreed.
- 10 December 2019: Annual allowance deadline for member requests for "scheme pays" (2017/18 tax year).
- 31 December 2019: Annual allowance deadline for schemes to include details of tax due under "scheme pays" in scheme's AFT return (2017/18 tax year).
Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world's leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world’s three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our “one-firm” culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

Please visit mayerbrown.com for comprehensive contact information for all Mayer Brown offices.

This Mayer Brown publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek legal advice before taking any action with respect to the matters discussed herein.

Mayer Brown is a global services provider comprising associated legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England), Mayer Brown (a Hong Kong partnership) and Tauil & Chequer Advogados (a Brazilian law partnership) (collectively the “Mayer Brown Practices”) and non-legal service providers, which provide consultancy services (the “Mayer Brown Consultancies”). The Mayer Brown Practices and Mayer Brown Consultancies are established in various jurisdictions and may be a legal person or a partnership. Details of the individual Mayer Brown Practices and Mayer Brown Consultancies can be found in the Legal Notices section of our website. “Mayer Brown” and the Mayer Brown logo are the trademarks of Mayer Brown.

© 2019 Mayer Brown. All rights reserved.

Attorney Advertising. Prior results do not guarantee a similar outcome.